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STUDENTS WITH TRAUMATIC BRAIN INJURY IN THE SCHOOL SYSTEM: EDUCATIONAL AND LEGAL IMPLICATIONS

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Traumatic brain injury is an area where the legal and educational systems must work hand in hand to ensure that injured young people are treated fairly and are given the best chance for success in the future.

For children and adolescents who have suffered a traumatic brain injury (TBI), return to school is often anticipated as a return to normalcy - the end of the trauma. Unfortunately, for many it is just the beginning of a long struggle. For students with pending litigation, the lawyer must pay careful attention not only to the rehabilitation process, but also to the school reintegration and the long term monitoring of the student's progress.

The purpose of personal injury litigation in today's society is to "right a wrong". Once it has been shown that a child or adolescent has been injured through someone else's carelessness or negligence, society, through the court system, will attempt to put an injured young person in the same position they would have been in had they not been injured. The only way to accomplish this task is through financial compensation. The question asked by the Court is, "What would this child or adolescent have done with his or her life had this injury not occurred?"

To answer this, it is necessary for the lawyer to prove on the balance of probability ("more likely than not") that the child or adolescent has problems now, or may develop problems in the future, as a result of injuries sustained in this tragic incident. To successfully accomplish this difficult task of "crystal ball gazing" for the remainder of the child or adolescents life, the lawyer must turn to family, friends and professionals who know the child or adolescent. Educators play a significant role in this process. Therefore, it is part of the lawyer's function to work with the school system to document pre-injury performance and prove any deficits that an injured child or adolescent may have now or in the future.

Particular attention must be given to accumulating accurate school records. They are crucial in understanding and proving the deficits that an injured child or adolescent may have. However, they are frequently complex, difficult to read and often incomplete. Most educators and administrators have little experience with litigation and therefore rarely consider the importance of the written school record in documenting the struggle for recovery or in determining a child's future potential, either educationally or vocationally. Every school record and comment generated throughout the school year can provide valuable insight into a child's progress and as such are an integral part of the litigation process for children who are injured during their school attending years. In some instances these records may be the only objective evidence available to document school or educational performance before and after the injury. Records should be gathered at the end of each school year, not simply at the end of Grade 12 or near the trial date. Once a student has graduated, school records are more difficult to acquire and have even been known to disappear. Trials often occur for injured children and adolescents ten or more years after their original injury increasing the importance of collecting documentation in a timely manner.

It can be a common and fatal mistake to simply rely on report cards to document a child's progress through school. It is common to see report cards presented to the Court as a definitive representation of a child's progress through school. This usually results in a simplistic, misrepresentative view of a child's ability. More often than not the school records paint a more optimistic picture than reality indicates. A glowing report card of a child who has had a TBI may represent sympathy grades, an attempt by the teacher to keep the child with his peers as they move from one grade to the next, an indication of "group mark" rather than an individual assessment or may indicate a lack of understanding of the child's true

difficulties. It is also possible to incorrectly interpret report cards by taking the information at face value. For example, a large number of absences can be interpreted as many inexcused absences (skipping) but may in fact be due to illness or a hospital admission.

Every student in the school system has a Permanent Record Card (PR Card). This document follows every student through their public school education experience - Kindergarten to Grade 12. If the student moves, the PR Card should be transferred to the new school. The PR Card is a snapshot of yearly school performance, not an in-depth record. However, it can provide clues as to trends in performance, brief assessment information, the existence of learning disabilities, absences and tardiness, and schools attended.

Report cards offer more insight into educational performance. Elementary school report cards provide valuable anecdotal information about the student's performance relative to the curriculum learning objectives. They describe the student's academic, behavioral and social progress. Students in Kindergarten to Grade 3 are assessed with anecdotal comments only with letter grades assigned for the first time in Grade 4. High school report cards record grades and usually one or two computer generated comments per subject. Interim reports, sent out mid-term of each term or semester if required, also document important information.

According to provincial legislation, Individual Educational Plans (IEP's) must be written for students with TBI if they require any assistance or support, or curriculum adaptations or modifications. IEP's document strengths and weaknesses as well as strategies recommended to deal with any learning challenges.

Understanding the complexities of curriculum, funding and service delivery in the school system can be a daunting task for any lawyer representing a child or adolescent with a TBI. The importance of fully understanding the educational system cannot be over emphasized if the lawyer is to do an accurate and thorough job of documenting the present or future problems a child or adolescent with TBI may have. To accomplish this task and to prove in Court any deficits a child or adolescent may have requires the assistance of a skilled educator or educational consultant who understands TBI and who not only knows the school system but also the legal system. An experienced educational consultant will work closely with the lawyer to gather information such as the PR Card, all interim and final report cards as well as IEP's in order to understand the child or adolescent's educational performance, both before and after the injury. But this is only the beginning. The educational consultant will need to conduct year-end interviews and talk to teachers, counsellors and, if needed other students to ensure that an accurate picture is painted of any deficits. Injury related problems found early in a child's educational experience are frequently magnified exponentially throughout their life.

Each and every problem experienced by the child or adolescent with TBI must be found and analyzed to determine whether it is in any way related to their injury and then documented to ensure that the child or adolescent will be fully and fairly compensated. Failure to do this will result in substantial under compensation of the child or adolescent.

“Our goal is to ensure that our clients receive the best rehabilitation available as quickly as possible while actively working to protect our client's legal rights to obtain the best possible lifetime compensation.”

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